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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$ 100,000 (CATEGORY "C" CLAIMS)

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* See document S/AC.26/1996/R.3/Add.1/Rev.1 (in English only) for Annexes I and II. Distribution of Annex III is restricted to each respective submitting Government or international organization due to confidentiality.

INTRODUCTION

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$ 100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure 1/ (the "Rules"). These recommendations concern the second instalment comprising 62,337 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel has reviewed the second instalment of category "C" claims in a continuum with the Panel's processing of the first instalment of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$ 100,000 (Category 'C' Claims)"2/ (the "First Report"). The present report builds upon the considerations, descriptions, precedents and determinations expressed in the First Report, and incorporates these by reference.3/

3. This report reflects the work performed by the Panel since it issued its recommendations on the first instalment of category "C" claims. Since the First Report, the Panel has held four sessions with the Commission's secretariat, all of which were conducted in private at the secretariat's headquarters in Geneva. These sessions took place from 20 through 22 November 1995; 1 through 2 and 26 through 27 February, and 28 through 30 March 1996. Also present at the sessions were experts whose advice was requested by the Panel in accordance with article 36 (b) of the Rules.4/ Communications between the Panel and the secretariat continued between sessions.5/ The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the second instalment.

4. In addition to the Introduction, this report contains five sections and three annexes. Section I recapitulates the Panel's mandate. Section II describes the expedited processing approach developed on the basis of the Panel's mandate and summarizes, in general terms, the work performed to give effect to this approach. Section III describes the various activities undertaken by the Panel and the secretariat in the organization and preparation of claims for database-assisted processing. Based on the substantive determinations made by the Panel for the first instalment of category "C" claims, section IV addresses the validation and application of these determinations in this second instalment of claims. Section V summarizes the Panel's recommendations.

5. Annex I contains the expert opinion of the statistical consultants on the statistical modelling approach adopted by the Panel as a means to

resolve several of the loss types contained in the category "C" claims. At the request of the Panel, the secretariat, in collaboration with these experts, has prepared a more detailed technical description of the modelling process. This description is also included in annex I. Annex II contains the recommended compensation amounts for claims included in the second instalment of category "C" claims for each submitting Government and international organization. Annex III contains a breakdown of these recommended amounts by individual claimant.

I. GENERAL FRAMEWORK

6. At the outset, the Panel recalls the framework within which it operates. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council Decisions, the Rules, and other relevant principles and practices of international law. The Panel has also taken into account the following: information accompanying the submission of the second instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; further communications by submitting Governments and international organizations providing background information related to their claims; and relevant United Nations and other reports.

7. In terms of defining the Panel's mandate, the Governing Council's Decision 1 has particular relevance.6/ In this Decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, Decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted."7/ Consistent with this Decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims of smaller amounts.

II. PROCESSING APPROACH AND SCOPE OF WORK

8. In view of the large number of category "C" claims submitted to the Commission, the provisions of Decision 1 have had a significant bearing on the development of a claims processing system. The Commission has received approximately 430,000 category "C" claims.8/ As explained in the First Report, one category "C" claim may constitute the aggregate of more than

twenty different types of damages (e.g., various categories of mental pain and anguish, medical expenses, support losses, personal property losses, loss of motor vehicles, employment-related losses, real estate damages, business losses, etc.). Each of these highly diverse loss types requires the application of a separate processing method.9/ Based on an estimated average of three loss types per claim, the resolution of some 430,000 claims involves the processing of up to 1.3 million separate loss elements.

9. The Panel was mindful of these parameters when it made its recommendations on the first instalment of category "C" claims. As seen in the First Report, where appropriate, the Panel implemented methods, criteria, and techniques that could expedite the processing of thousands of category "C" claims in subsequent claims instalments. Viewed as a "sample" of other similarly-situated claims, the claims in the first instalment were reviewed to formulate general criteria and conclusions, whether related to issues of causation, evidence, valuation or otherwise. By implementing statistical sampling and modelling techniques, the Panel aimed to adopt a balanced approach that would render practical and simple justice.10/

10. The Panel also recognized the limitations of devising a mass claims-processing system based solely on the review of the 2,873 claims included in the first instalment. The claims in the first instalment were the first category "C" claims filed with the Commission, and therefore did not include the submissions of all concerned Governments and international organizations. The first instalment of claims also did not reflect the full experience developed by Governments and international organizations in preparing their claims. Furthermore, the claims were not sufficient in number to raise all generally applicable issues for each loss element. Noting that the criteria resulting from the Panel's disposition of the first instalment of claims should not in all respects be considered as necessarily final, the Panel acknowledged in the First Report that further development of the processing methods and criteria would be required for the resolution of future claims instalments.11/

11. The activities undertaken by the Panel and the secretariat since the first instalment of category "C" claims reflect the considerations expressed in paragraphs 8, 9, and 10, supra. The secretariat has focused on building a claims-processing system to apply the Panel's precedental determinations. Section III, infra, explains the main components of this comprehensive processing system: the registration and organization of claims; the entry of claims data into a database; the checking of claims data; the application of processing criteria; and the reporting of awards. As described in section IV, infra, the Panel has also further reviewed its substantive processing criteria. With the development of the claims database, additional information about the category "C" claims population as a whole has now become available. This has allowed the Panel to

reconfirm and, where appropriate, refine its evidentiary determinations and valuation methods. Using standard statistical methods against the background of relevant precedents, the Panel has conducted sampling projects that investigate evidence across all claims, and has performed computer database analyses that enable the validation of the various processing methods. Statistical expertise and specialized computer facilities have enhanced the modelling approach adopted by the Panel.

12. As noted in paragraph 8, supra, the diversity of loss elements within each category "C" claim has necessitated the development of different processing methodologies for each type of loss. For the loss elements most frequently claimed, database applications and statistical sampling and modelling techniques have been designed. However, as acknowledged in the First Report, certain losses under category "C" require additional claim-by-claim attention.12/ Examples of such losses are those relating to personal injury or death, claims posing jurisdictional problems, and claims presenting multiple claim issues. Although the Panel is aware of the need to resolve these more problematic claims in an expeditious fashion, in light of its mandate, the Panel has determined that those loss types that lend themselves easily to expedited measures will be addressed first. This "fast-track" approach forms the basis for the size and composition of the second instalment of category "C" claims.

13. The second instalment is composed of claims that contain only those loss elements that could be processed efficiently through database-assisted techniques and did not otherwise present any special problems. The claims resolved on this basis represent the losses most frequently suffered by category "C" claimants, principally: losses claimed on the "C1" page of the claim form for transportation, food, lodging, relocation and other related losses ("C1-Money" claims); losses claimed on the "C4" page for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" claims); losses claimed on the "C4" page for the loss or theft of motor vehicles ("C4-MV" claims); losses claimed on the "C5" page related to bank accounts located in Kuwait; and wages and salary losses claimed on the "C6" page of the claim form ("C6-Salary" claims).13/ Representing the aggregate result of the Panel's processing of these fast-track loss elements, the amounts recommended for compensation in the second instalment therefore resolve all losses contained in these claims. It is expected that a number of subsequent instalments of category "C" claims will also be based on this fast-track approach, and will therefore include additional claims composed of these same loss elements.

14. Also covered by the fast-track approach are certain additional loss types that, for sections of the category "C" claims population, are capable of being sampled or otherwise decided at this stage. These include the following: claims submitted by nationals of Organization for Economic Cooperation and Development (OECD) countries and Kuwait on page "C1" of the

claim form for mental pain and anguish ("C1-MPA" claims) related to forced hiding; and C1-MPA claims submitted by nationals of OECD countries related to hostage taking or illegal detention for more than three days.

III. ORGANIZATION AND PREPARATION OF CLAIMS

15. Much of the work since the first instalment of category "C" claims has concentrated on developing the claims processing system in order to give mass effect to the Panel's determinations and criteria. This section provides a summary of these activities.

16. As explained in the First Report, the Commission made a fundamental choice when it determined that computerized support would be necessary to process category "C" claims.14/ Essential processing functions that depend on the computerized organization of claims include the registration, tracking and grouping of claims, claims analysis, development of processing criteria, statistical modelling, selection of samples, extrapolation of sampling results, duplicate and cross-category claims checking, and the calculation and reporting of compensation. Working with its information systems staff, the secretariat has been able to develop further the database processing system.15/

17. Given the large volume of category "C" claims filed by the Governments of Kuwait and Egypt (approximately 166,000 and 92,500 claims, respectively), the secretariat provided claim numbers and data entry software to these Governments to allow the submission of their category "C" claims, not only on paper, but also in electronic format. After the secretariat had loaded the electronic claims data received from Egypt and Kuwait into the database, the secretariat's organizational tasks were primarily concerned with the approximately 165,000 remaining claims submitted to the Commission. These claims and their attachments entailed the organization of some 7 million pages of paper, submitted by more than 70 Governments and international organizations.

18. As a first step towards the entry of these claims into the database, paralegal staff at the secretariat registered the claims electronically and labelled the claim forms and claim boxes with pertinent identifying information. In addition, the secretariat performed various preliminary reviews and checks of the claims, such as verifying claim copies with originals. The secretariat retained the original claim forms and forwarded the copies to a professional data entry firm for entry into electronic format.16/ The order in which the claims were processed took into account a number of considerations: the need to ensure that claims from all submitting Governments and international organizations were included in the initial stage of data entry; the need for this initial group of claims to be representative of the category "C" claims population as a whole; the

relative size of the submissions made by Governments and international organizations; the organizational complexity of groups of claims; and the order in which consolidated claims were registered.

19. Given the complex and diverse nature of the losses suffered, and the difficulties many claimants had in expressing their losses through the claim form, the data entry process has posed a major challenge. Indeed, as the Panel pointed out in the First Report, many claims were filed with the Commission in an unorganized or incomplete state. Analysis of the claims has revealed distinct differences in presentation.17/ While many claims have been carefully prepared, numerous others were based on erroneous interpretations of the "C" claims category as a whole, and the category "C" claim form in particular.18/ In view of the consequences that this has had in terms of both the secretariat's organization of the claims, and the Panel's claims-processing approach, the Panel finds it necessary to elaborate on this point.

20. The difficulties associated with the category "C" claims received by the Commission are far-reaching and varied. The following list identifies many of the complications and issues raised by a large number of claims: duplicate claim forms filed by the same claimant; multiple claims filed on behalf of or with other individuals; claims that were later supplemented or substituted in whole or in part; formal deficiencies under the Rules; identical or similar losses claimed in other claims categories; misunderstanding of jurisdictionally relevant dates; incorrect calculations; unclear currencies; different numbering conventions; the use of wrong claim form pages; overlapping or double-claimed losses within a claim; implied or express inclusion of individual amounts for lump sum categories of mental pain and anguish; discrepancies between originals and copies of claim forms; contradictions between two completed sides of the pages of the form; questions of translation; claims exceeding US$ 100,000; lack of family-related information; inadvertent switches of evidentiary attachments between claims; ambiguity as to a claimant's identity; illegible information; claim forms in a tattered condition; ambiguous modifications to the completed claim forms; inconsistencies between specific amounts and totals; and the partial completion of the claim form. For every problem that appears to affect large groups of claims, thousands of individual claims present unique complications.

21. These difficulties have had a number of consequences on the practical application of a mass claims-processing system. Because relevant information is absent or not clearly provided, or simply because the volume of claims corresponding to a particular type of loss does not permit individual examination, detailed distinctions regarding legal and factual issues are not always possible.19/ Given that a manual review of 430,000 highly diverse claims is not a realistic option, the Panel's processing criteria and recommendations take account of similarly-situated sections of

the claims population as a whole. This is in keeping with Decision 1 and relevant precedents. As further explained in section IV, infra, by compiling and comparing information about groups of claims, statistical sampling and modelling methods provide results that are efficient and, based on presumptions of normalcy and on the reduction of individual bias, reasonable.20/

22. Although claims are resolved using such mass-processing techniques, as much as possible the data entry and data management process takes into account the difficulties associated with individual claims, such as those enumerated in paragraph 20, supra. Tailored to the Panel's processing criteria, and building upon similar efforts made with respect to the first instalment,21/ a set of procedures has been designed to facilitate the complete and consistent capture of claims data. In addition to the preliminary checks referred to in paragraph 18, supra, the preparation of category "C" claims involves the following processes: the application of specially developed data input rules and guidelines; the ongoing resolution of issues detected during the claims scrutiny and entry process; the special coding of particular claims not so resolved; the application of an input validation program; the database-assisted identification and verification of claims presenting specific problems; statistically supported input quality control;22/ and the separation of certain problematic claims for further review.

23. The processes described in this section have resulted in the creation of a database of considerable size and scope that stores category "C" claims data in a systematic and organized format. To facilitate the use of this information, the secretariat has developed a variety of software applications including on-screen access to claims, the selection of claims based on grouping criteria, the generation of relevant statistics, the tracking and management of the claims' processing status, the calculation of compensation amounts, and the automated reporting of awards. The claims included in the second instalment of category "C" claims are the first group of claims to have passed through all stages of this claims-processing system.

IV. PROCESSING METHODOLOGIES AND RESULTS

24. As noted in section II, supra, the data which have become available with respect to the category "C" claims population as a whole have enabled the Panel to reconfirm and, where appropriate, refine its evidentiary determinations and valuation methods.23/ Having validated and finalized its processing criteria through statistical analysis, the Panel has applied these methodologies to the second instalment of claims. This section IV describes the processing methodologies used for the loss elements included in the Panel's fast-track processing approach.

A. Statistical sampling methodologies: C1-MPA claims

25. As noted in paragraph 7, supra, the Governing Council has provided for the use of statistical sampling to resolve claims in the urgent categories. The Panel has made sampling techniques an integral component of its processing system. The First Report describes the Panel's use of sampling in the context of the first instalment of category "C" claims.24/ The First Report also mentions the precedental use of sampling in courts, tribunals and commissions in an international and a national context.25/

26. The basic goal of a sampling exercise is to examine a section of a population, i.e., a sample, in order to draw conclusions about the entire population as accurately as possible.26/ A principal factor in designing a sample therefore, is to maximize the likelihood that, with respect to the characteristics being considered, the sample selected is representative of the non-sampled population. While exact representativeness is seldom the case, with a properly designed sample it is possible to obtain a reliable estimate of the proportion of the population that holds the characteristics under consideration.

27. A sample that is randomly selected and relatively large is more likely to be representative. At the same time, the sample should not be so large as to undermine the very purpose for which the sampling exercise is being conducted: time savings and cost effectiveness. Based on the available time and resources, the sample size is a function of several inter-related factors. These factors include the size of the population from which the sample is selected, the amount of information known about the population being sampled, the homogeneity or heterogeneity of the population, and the degree of precision (i.e., margin of error)27/ and level of confidence28/ desired.

28. After reviewing the available data and the various sampling methodologies, the Panel decided to employ a simple random sampling methodology consisting of a number of inter-related stages. In the first stage, a sufficient number of sample claims are randomly selected. Applying the factors enumerated in paragraph 27, supra, the secretariat's statisticians thereby take into consideration the results obtained from the application of the Panel's criteria to the claims in the first instalment or to pilot samples, and information provided by submitting Governments and international organizations about their claims. After the sample is selected, the secretariat reviews the claims pursuant to the Panel's processing criteria. The results of this review are captured on worksheets and in electronic format. Once analyzed by the statisticians, and extrapolated to the population of claims from which the sample is drawn, the results are then considered by the Panel.

29. The advice of mass claims-processing experts and statisticians has ensured that the sampling procedures adopted by the Panel are the most appropriate for the processing of category "C" claims, pursuant to standard statistical practices. As further described in paragraphs 30 through 32, infra, the Panel has relied on sampling techniques to process groups of C1-MPA claims in the second instalment of category "C" claims. The Panel expects to use the same techniques to process additional groups of C1-MPA claims, and other loss types, in future category "C" instalments.

30. Three considerations led to the Panel's selection of groups of C1-MPA claims for the second instalment. First, because homogeneity of the population allows the sample size to be manageable, the sampling projects covered groups of claims expected to share evidentiary and other relevant characteristics. Second, and related to the foregoing, the Panel also took into consideration the ease with which the criteria adopted in the first instalment could be applied in the context of a sampling methodology. Third, the Panel was guided by the overall number of C1-MPA claims by submitting entity.

31. Based on the above considerations, the sampling population included a large number of claims filed by the Government of Kuwait that contained the C1-MPA loss element of forced hiding.29/ Ensuring that the second instalment comprised a sufficient number of claims representing all submitting Governments and international organizations, claims by nationals of OECD countries were also included in the sampling population. Known to have been specifically targeted for hostage taking, many of these individuals have submitted claims for hostage taking or illegal detention for more than three days, or for forced hiding.30/ The composition of the population thus led to the definition of two separate samples: one for claims filed by Kuwaiti nationals, and a second for claims by nationals of OECD countries.

32. The basic sampling objective for these C1-MPA loss elements was to determine how many claimants, on the basis of the sample claims reviewed, could be deemed to have satisfied the applicable C1-MPA criteria established in the First Report.31/ The sample claims were also reviewed to assess the reliability of the number of days claimed on the claim form for purposes of determining the recommended amounts. Based on the sampling results,32/ which confirm the Panel's original findings with respect to C1-MPA claims in the first instalment, the Panel concludes that Kuwaiti nationals with claims for forced hiding, and nationals of OECD countries with claims for forced hiding or for hostage taking or illegal detention for more than three days, should be compensated for their respective C1-MPA losses. The Panel further finds that such compensation is to be based on the number of days stated on the claim form, to be calculated by application of the formulas set out by Decision 8 of the Governing Council.33/

B. Statistical modelling methodologies: C1-Money and C4-CPHO claims

33. The considerations that led the Panel to adopt supplementary methods of assessing the value of claimants' losses in the first instalment continue to be valid. For loss types such as C1-Money and C4-CPHO, the claims by themselves do not provide a sufficiently clear or consistent valuation basis.34/ Even if the quality of presentation were such that claims could be valued individually on the basis of their supporting documentation, the vast number and immense diversity of the category "C" claims do not permit such an approach. The Panel recalls, for example, that for "C4" personal property losses, approximately 250,000 claims have been filed.35/

34. As mentioned in the First Report, where lack of time and paucity of information inhibit a more individualized processing approach, statistical tools such as regression analysis provide a means for taking into account individual characteristics relevant to the determination of compensation awards. Statistical methods also introduce a level of objectivity and consistency into the determinative process of resolving thousands of claims presenting a myriad of valuation and other issues.36/

35. A statistical regression model allows for the comparison of an amount claimed by any one claimant to the amounts claimed by all other claimants. Such comparisons take account of each claimant's personal and other characteristics that condition the amount claimed. Thus, the model generates an objective standard for each claimant reflecting individual qualities that are likely, on average, to have made the claimant more or less prone to have suffered the losses alleged. The claimant may then be awarded the lower of the amount generated by this process or the amount claimed. The Panel considers compensation determined on this basis to be reasonable because it reflects the patterns in the amounts claimed by all claimants in the population. Also, within the framework of mass claims-processing, the compensation reflects, as much as possible, the individual circumstances and characteristics of the claimant.37/

36. The Panel made effective use of statistical modelling to process the first instalment of category "C" claims. The Panel has used the additional statistical information to validate and further develop its modelling approach. As noted, in adopting modelling as a processing method the Panel has relied on the expertise of statistical consultants. The Panel refers to their expert opinion with respect to the results of the modelling process, and to the secretariat's technical description of this process, both contained in annex I. The following two paragraphs summarize the modelling approach.38/

37. The first phase of the modelling process requires the building of a properly specified model. The largest possible representative sample of

available claims is used to determine the parameters of the model, i.e., the weightings to be given to each of the variables included in the analysis, taken from the claim form and other relevant data.39/ The effects of the various parameters, i.e., how the parameters function in the model to explain the amount claimed, are then interpreted to determine the optimum effects leading to the best approximation of the amount claimed. Various statistical tests and calculations are performed to assess the global quality of the model in terms of this approximation. Once the model satisfies statistically and theoretically sound criteria, the relevant parameters are retained for use in the second phase: the model application.

38. In the second phase of the modelling process, the model — a set of variables and corresponding parameters that form the regression equation — is applied to the claims included in a particular instalment. These can include claims used in the model building phase, as well as claims not used for this purpose. Regardless of the claims to which the model is applied, because the model parameters have been determined using a representative sample, all claims are treated alike on the basis of a common mathematical formula.

39. Using these procedures, the Panel has further developed the statistical model for C4-CPHO claims.40/ In addition, relying on the available data-set, the Panel was also able to apply the same approach to C1-Money claims.41/ As in the first instalment, to validate its valuation approach the Panel verified, on a sample basis, the evidence submitted in support of C1-Money and C4-CPHO claims. In addition to confirming the immense diversity of the items claimed, the sampling results revealed patterns of evidence similar to those previously observed: approximately 93 per cent of C1-Money claimants and 90 per cent of C4-CPHO claimants submitted some form of evidence in support of their claim in addition to the claim form. In light of this evidence, the Panel concludes that claims for C1-Money and C4-CPHO should be compensated at the lower of the amount claimed or the amount generated by the modelling process described in the preceding paragraphs.

C. Other methodologies

1. C4-MV claims

40. The First Report describes the Panel's processing considerations for C4-MV claims and the substantive criteria to verify and compensate such claims.42/ Taking into consideration the information available on the circumstances surrounding motor vehicle losses, the Panel has applied a rebuttable presumption as to the fact of a claimant's loss and its causal relationship to the Iraqi invasion and occupation of Kuwait.43/ Furthermore, non-Kuwaiti claimants are considered to have established ownership of the motor vehicle claimed if they have provided the make or

model of the motor vehicle, the registration or vehicle identification number, and the original cost or value thereof.

41. For those claims in the second instalment that satisfied these ownership criteria, 44/ the Panel determined the recommended amount of compensation by selecting the lowest of three amounts: the amount of loss claimed for the motor vehicle on the "C4" page of the claim form; the Motor Vehicle Valuation Table ("MVV Table") value corresponding to a claimant's motor vehicle;45/ and the original cost or value of the vehicle as stated on the "C4" page of the claim form.46/

2. "C5" claims related to bank accounts in Kuwait

42. The Panel refers to the processing considerations set out in the First Report with respect to claims stated on the "C5" page of the claim form for losses related to bank accounts located in Kuwait.47/ The Central Bank of Kuwait has established procedures to provide claimants access to amounts on deposit with Kuwaiti banks. By availing themselves of these procedures, claimants indeed appear to have been able to recover their deposits. The Panel recognizes that the procedures established by the Central Bank of Kuwait are intended to apply to all deposits with banks in Kuwait. The Panel therefore reaffirms its conclusion made in the First Report that claims for such deposits, including those in the second instalment of category "C" claims, are not compensable.

43. As it did with respect to the first instalment of "C5" claims for bank accounts in Kuwait, in order to facilitate any follow-up that may be necessary with respect to bank deposits in Kuwait, the Panel directs the secretariat to provide each submitting Government and international organization with a list of its claimants having a claim for "C5" Kuwait bank account losses in the second instalment. The Panel also directs the secretariat to forward the same information, through the Government of Kuwait, to the Central Bank of Kuwait.

3. C6-Salary claims48/

44. The First Report details the Panel's valuation methodology for C6-Salary claims.49/ In the First Report, the Panel found that a claimant's pre-invasion income reflected a wide variety of employment-related factors. These factors include: the remaining portion of a fixed-term contract, unpaid remuneration, allowances and benefits, holiday pay, end-of-year and other bonuses, payment in lieu of notice of termination of employment, severance pay, and end-of-service indemnities. Bearing in mind that a manual review of each income loss claim is not a viable option, the Panel found that the pre-invasion monthly income, as stated by the claimants, should be the point of departure for determining compensation. The Panel

also noted that such compensation would have to take into account claimants' mitigation of their losses.

45. The resulting valuation methodology established for C6-Salary claims is based on the application of a multiplier of seven to a claimant's asserted pre-invasion monthly income. Recognizing that some claimants had more difficulty than others in preparing their claims, the Panel "capped" the compensation for claimants with higher incomes. These claimants were awarded the lesser of the amount resulting from the application of the multiplier of seven, and the amount of a claimant's total C6-Salary claim.50/ Aware, however, that a large number of wages and salary claims were filed in category "C", the Panel noted in the First Report that it would review the methodology thus developed for C6-Salary claims in light of the evidentiary and other characteristics of future instalments of such claims.51/

46. Accordingly, the Panel has conducted an extensive analysis to ascertain the level of evidence in support of C6-Salary claims, to assess the appropriateness of the seven multiplier, and to determine whether modification of the compensation cap level was warranted. Based on the analysis of a statistical data-set composed of 60,374 C6-Salary claims representing all submitting Governments and international organizations, the Panel was able to draw conclusions about the entire population of wages and salary claims.

47. The sample revealed the following profile of C6-Salary claimants and their asserted losses. Consistent with official reports, approximately 60 per cent of the claimants in the data-set were found to have had a monthly income below US$ 750, the amount representing the established low income cut-off for employees in Kuwait.52/ Most claimants in this group are from countries recognized as the principal sources of low income labour in Kuwait and Iraq. Approximately 40 per cent of the claimants in the data-set were found to have had a monthly income in the middle income range of US$ 750 to US$ 3,000 (for employees in Iraq) or US$ 3,500 (for employees in Kuwait). Less than one per cent of the claimants in the data-set had an income in the high income range.

48. The level and patterns of evidence submitted in support of C6-Salary claims are similar to those observed in the first instalment of claims. Over 92 per cent of claimants in the data-set submitted some form of evidence in support of their claims in addition to the claim form.53/ The quality of the evidence appears to be related to the level of income: the higher the claimant's income, in general, the better the evidence. At the same time, while many claimants in the low income group appear to have had considerable difficulty in expressing their income losses, a significant number of these claimants have also submitted evidence of probative value.

49. To evaluate the effect of the C6-Salary compensation multiplier, the Panel analyzed the income losses claimed in the sample in relation to the claimants' monthly income. This also provided a frame of reference for comparing claimants from different countries and with different income levels. The Panel's analysis shows that the aggregate compensation effect of the multiplier formula is to reduce the total amount claimed for income losses by approximately 47 per cent, prior to the application of the monthly income-based cap. The sampling results suggest that the Panel's valuation standard, based on precedent and confirmed by the characteristics of the claims, is not only efficient, but also constitutes a reasonable and fair measure of claimants' income losses.

50. As a final step in this validation process, the Panel used the C6-Salary sample data to examine the effect of the compensation cap referred to in paragraph 45, supra. The Panel's principal rationale for imposing a compensation limit was to minimize the risk of excessive compensation, while the actual level of the cap, reflecting Governing Council Decision 1,54/ sought to avoid treating less affluent claimants unfairly. Bearing in mind the distribution of monthly incomes and amounts claimed in the sample,55/ the Panel finds it appropriate to cap the compensation for claimants with monthly income levels above the low income cut-off level of US$ 750 per month.

51. Thus, of the claimants qualifying for compensation for C6-Salary losses, those with pre-invasion monthly incomes exceeding US$ 750 are awarded the lesser of the amount resulting from the application of the seven multiplier to their monthly income or the amount of their total claimed income loss. Given that many of the claimants who earned US$ 750 or less per month appear to have had difficulty expressing their losses, and were among the lowest paid workers in Iraq and Kuwait, these claimants are compensated at the amount resulting from the multiplier formula.

V. RECOMMENDATIONS

52. In addition to addressing issues raised by cross-category claims, this concluding section summarizes the Panel's recommendations to the Governing Council, pursuant to article 37(e) of the Rules, for the second instalment of category "C" claims.

53. While the Panel is mindful of the need to process all category "C" claims expeditiously, the Panel recalls that the second instalment of category "C" claims is based on the fast-track approach explained in paragraphs 12 through 14, supra. This approach covers claims that represent the most common types of loss and that do not otherwise present any special processing problems. Such loss types lend themselves to mass claims-processing through database applications, on the basis of sampling

and statistical modelling. Representing the aggregate result of the Panel's processing of these fast-track loss elements, the amounts recommended for compensation in the second instalment therefore resolve these claims in their entirety. The fast-track processing system described in the present report is also expected to resolve applicable category "C" claims in future instalments. With respect to the processing of all category "C" claims, the Panel underlines the particular relevance of paragraphs 19 through 21, supra.

54. Using a special program similar to that used for the processing of category "A" claims, the secretariat has performed a cross-check on a number of available identifiers in order to exclude as much as possible intra- and cross-category multiple recovery.56/ In this regard, the Panel has followed up on the procedures referred to in its First Report.57/ Given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by Governments and international organizations to prevent instances of overpayment to their claimants.

55. The Panel of Commissioners for category "B" claims has deemed it appropriate to transfer in whole, or in part, a number of claims to category "C". Considering the possibility of a partially or completely corresponding claim already having been filed under category "C", these transfer cases will require detailed review. The Panel plans to include these transferred claims in subsequent instalments of category "C" claims, beginning with those claims that can be processed under the Panel's fast-track approach.

56. The Panel hereby presents the amounts recommended for compensation on 62,121 claims in the second instalment of category "C" claims. Totalling US$ 425,057,699.08, these recommended compensation amounts are specified in annex II for each Government and international organization included in the second instalment. Annex III contains a breakdown of these amounts in respect of individual claimants; each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. Two hundred and sixteen claims in the second instalment of category "C" claims are not recommended for payment.

57. With reference to the considerations on the subject of interest expressed in the First Report,58/ the Panel recommends that interest be awarded on the claims included in this second instalment of category "C" claims as of 2 August 1990.59/

Geneva, 30 March 1996

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ The comprehensive First Report noted that future reports covering further instalments were expected to be more concise. First Report, p. 2.

4/ As with the first instalment, the Panel has benefited from the mass claims-processing expertise of Professor Francis McGovern of the University of Alabama. As further described in paragraph 36 infra and annex I, in adopting statistical modelling as a means to resolve several loss types in category "C" claims, the Panel also relied on the advice of statistical experts, Professors Yves Balasko and Gilbert Ritschard of the University of Geneva.

5/ Pursuant to article 33(2) of the Rules.

6/ S/AC.26/1991/1.

7/ Idem.

8/ A consolidated claim filed by the Government of Egypt on behalf of 915,527 Egyptian workers is under review by a separate Panel of Commissioners.

9/ The terms "loss type" and "loss element" are used interchangeably in this report. For a listing of loss elements, see First Report, p. 44, note 115.

10/ Ibid., pp. 2, 40-41 and 44-45.

11/ Ibid., pp. 40, 48, 138 and 181.

12/ Ibid., p. 39.

13/ In addition to C6-Salary losses, claims submitted by the Government of Egypt on page "C6" of the claim form for mental pain and anguish ("MPA") related to the deprivation of all economic resources ("C6-MPA" claims) were also included as a fast-track loss in the second instalment.

14/ First Report, pp. 47-48.

15/ Ibid., p. 36.

16/ The data capture for category "C" claims is conducted by the same company responsible for the data-entry of the Commission's category "A" claims verification records. The data-entry firm makes use of input software designed by the secretariat to capture all information contained in or reflected by the completed claim forms. To record this information as accurately as possible, standard double-entry and compare methods are applied.

17/ First Report, pp. 42-43 and 53.

18/ The First Report addresses the background of these problems. While certain claimants understood the claim form, or received adequate assistance in the quantification and presentation of their damages, for the vast majority of individuals the completion of the claim form was a highly unusual and difficult exercise. In addition, not all claimants were able to benefit from the guidance of a well-organized national claims program. Ibid., pp. 42-43.

19/ Ibid., p. 43.

20/ Ibid., pp. 41, 79 and 80.

21/ Ibid., p. 53.

22/ Similar quality control has been undertaken with regard to the claims submitted on diskette by the Governments of Kuwait and Egypt.

23/ See also First Report, p. 42.

24/ Ibid., pp. 39-47.

25/ Ibid., pp. 40-41. For a more detailed description of relevant precedents and sampling techniques, see "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", S/AC.26/1995/4 (the "Fourth Category 'A' Report"). More than 500,000 category "A" claims were processed on the basis of sampling.

26/ See Fourth Category "A" Report, paras. 46-60.

27/ Ibid., paras. 51-53.

28/ Ibid., paras. 54-58.

29/ The claims submitted by Kuwaiti nationals that are included in the second instalment relate exclusively to this loss element. Claims filed by Kuwaiti nationals for hostage taking or illegal detention will be processed in future instalments.

30/ In view of their small number, claims filed by nationals of OECD countries for hostage taking or illegal detention for three days or less are to be reviewed separately at a later stage.

31/ The Panel's processing considerations for C1-MPA claims and the substantive criteria applied to verify and compensate such claims are set forth in the First Report, pp. 82-96. Furthermore, as a threshold requirement relevant to all category "C" loss types, the Panel verified in the first instalment whether claimants were resident in Iraq or Kuwait at the time of the invasion. First Report, pp. 52-53 and 90. In the current sampling population, over 99 per cent of claimants provided evidence to support the fact of their residence in Iraq or Kuwait.

32/ Approximately 94 per cent of claims filed by nationals of OECD countries for hostage taking or illegal detention for more than three days satisfied the Panel's criteria. With regard to claims for being forced to hide on account of a manifestly well-founded fear for one's life, all claims by nationals of OECD countries and 99.5 per cent of claims by Kuwaiti nationals satisfied the Panel's criteria. These results are consistent with United Nations reports regarding incidents and patterns of

hostage taking, detention and forced hiding during the invasion and occupation of Kuwait.

33/ S/AC.26/1992/8. The Panel notes that some of the C1-MPA claims that satisfy the Panel's criteria for forced hiding or for hostage taking or illegal detention for more than three days do not indicate the number of days on the claim form. Where necessary, the Panel intends for such claims to be reviewed manually.

34/ First Report, p. 143.

35/ See also First Report, p. 129, note 257 and p. 132, note 258.

36/ First Report, p. 143.

37/ Ibid., pp. 146-147.

38/ See also First Report, pp. 144-147.

39/ For an explanation of the variables see annex I, infra.

40/ First Report, pp. 129-147.

41/ See also First Report, pp. 59-81.

42/ Ibid., pp. 148-158.

43/ Idem.

44/ Claims not meeting the ownership test on the basis of the information contained in the database are to be reviewed separately.

45/ The MVV Table provides standard market values indexed by make, model and year, for motor vehicles in Kuwait for the years 1980 to 1990. Where possible, the applicable MVV Table value was determined and entered into the database as part of the data entry process.

46/ A more detailed description of the valuation method applied to C4-MV claims is contained in the First Report, pp. 155-157.

47/ Ibid., pp. 164-165.

48/ As mentioned in note 13, supra, the Panel also applied its fast-track processing approach to claims filed by the Government of Egypt for C6-MPA losses. Among the processing considerations described for this loss type in the First Report, the Panel notes in particular that the claimant's asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. First Report, p. 194.

49/ This methodology takes into account a number of factors, including relevant Iraqi and Kuwaiti legislation, an expert study of entitlements payable upon termination of employment, the number and characteristics of the claims included in the first instalment, the number of claims expected in other instalments, and the evidence submitted in support of the claims. Ibid., pp. 168-194.

50/ For this purpose, a claimant's C6-Salary claim, in principle, is represented by the aggregate of the amount stated in the "Wages or Salary" and "Other" fields of the "C6" page of the claim form.

51/ First Report, p. 181. The number of C6-Salary claims is currently estimated to exceed 200,000.

52/ Ibid., p. 170.

53/ Various forms of documentary evidence (e.g., employment contracts, pay stubs, employer affidavits, work permits) were the most common type of evidence submitted. A majority of claimants also included personal statements relating to their C6-Salary claim. Of those claimants who did not submit additional evidence for this loss type, almost all have provided verifiable employer or sponsor information on the claim form. The vast majority of claimants without additional evidence were found to be in the lower income group.

54/ S/AC.26/1991/1.

55/ For all potential compensation cap levels considered, the differences appeared to be minimal in terms of average and total monetary and percentage consequences, and in terms of the number of claimants affected.

56/ See S/AC.26/Dec.22 (1994) and S/AC.26/Dec.24 (1994).

57/ First Report, pp. 54-57 and 71-72.

58/ Ibid., pp. 32-33.

59/ See also S/AC.26/1992/16.

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